

HEIRS OF RAYMOND D. CARSON, ET AL.

BLA 80-874

Decided October 7, 1981

Appeal from the decision of the Oregon State Office, Bureau of Land Management, declaring certain mining claims abandoned and void. OR MC 20817 through OR MC 20821.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Notice: Generally--Regulations: Generally--Statutes
All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

3. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

A notice of intention to hold a mining claim is required to be an exact copy of a document which was filed in the office of the state where the notice of location was filed. Sec. 314(a)(1) and

(2), Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744(a)(1) and (2) (1976); 43 CFR 3833.2-3(a)(1).

APPEARANCES: Donald D. Yokum, Esq., of Pendleton, Oregon, for appellants.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

Donald D. Yokum has filed this appeal on behalf of the heirs of Raymond D. Carson, et al. ^{1/} from the decision of the Oregon State Office, Bureau of Land Management (BLM), declaring the Silver Hill, Silver Hill Nos. 1 through 3, and the Toots mining claims (OR MC 20817 through OR MC 20821) abandoned and void for failure to file timely evidence of assessment work for the claims on or before October 22, 1979. These claims were originally located on July 1, 1940, and recorded with BLM September 19, 1979.

[1] Section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), requires the owner of an unpatented mining claim located prior to October 21, 1976, to file evidence of assessment work for the claim with BLM within the 3-year period following that date and prior to December 31 of each year thereafter. The corresponding Department regulation 43 CFR 3833.2-1(a) reads:

(a) The owner of an unpatented mining claim located on Federal lands on or before October 21, 1976, shall file in the proper BLM office on or before October 22, 1979, or on or before December 30 of each calendar year following the calendar year of such recording, whichever date is sooner, evidence of annual assessment work performed during the preceding assessment year or a notice of intention to hold the mining claim. [Emphasis added.]

Failure to so file is considered conclusively to constitute abandonment of a claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4.

When appellants failed to file timely either an affidavit of assessment work or a notice of intention to hold the mining claims, BLM properly held the claims to have been abandoned and void. Robert Keough, 54 IBLA 337 (1981).

Appellants contend that they thought they had adequately complied with the regulations based on Government publications provided by the Office of Public Affairs, BLM, specifically, "Notice to Mining Claims

^{1/} This appeal was filed by Donald D. Yokum, Attorney at Law, acting on behalf of the heirs and descendents of Raymond D. Carson, et al., and Emery Crowley, agent for said heirs and descendents of Raymond D. Carson. The record shows that the locators of these claims included Raymond D. Carson, Benard Carson, Sealy V. Carson, and Elizabeth L. Summers.

Owners" and "The Federal Land Policy Management Act of 1976." Reliance on their own interpretation of these publications concerning recordation cannot relieve them of the obligation of complying with the mandatory filing requirements of the law. Emery Crowley, 54 IBLA 229, 231 (1981). See also John Plutt, Jr., 53 IBLA 313, 316 (1981), and the concurring opinion by Judge Burski at 319.

[2] It is unfortunate that appellants were confused concerning the recordation requirements of assessment work, but such confusion is not a sufficient basis to prevent the voiding of these claims as required by 43 U.S.C. § 1744(c) (1976), and 43 CFR 3833.4(a). All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations. 44 U.S.C. §§ 1507, 1510 (1976); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Dale E. Henkins, 52 IBLA 9 (1981); Clifford J. Kelch, 50 IBLA 127 (1980).

[3] Appellants also argue that it was their belief "that the filing of the necessary location notices, legal descriptions, survey maps and recording fees was a notice of intent to hold and work said claims." Those documents do not constitute a notice of intention to hold a mining claim or group of mining claims. See 43 CFR 3833.2-3. A notice of intention to hold is a specific instrument which may be filed in appropriate circumstances. It is further required to be an exact copy of that instrument which was or will be filed in the office of the state where the notice of location was filed. See section 314(a)(1) and (2), FLPMA, 43 U.S.C. § 1744(a)(1) and (2) (1976); 43 CFR 3833.2-3(a)(1). It is clear from appellants' statements that they did not file the required instrument in the local office of the State of Oregon and thus the documents filed with BLM could not serve as a notice of intention to hold the claims. Pacific Coast Mines, Inc., 53 IBLA 200 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

M. Frazier

Gail

Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Bruce R. Harris
Administrative Judge

